# The Solicitors' Journal

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# CURRENT TOPICS

### Masters in the King's Bench

THE news of the retirement of Sir WILLIAM VALENTINE BALL from the office of Senior Master of the King's Bench Division of the High Court was received with great regret by all the counsel, solicitors and clerks whose work takes them to the "bear garden," as the ante-room to the chambers of masters and judges has long been known. Gifted with the charm that goes with a warm heart, Sir Valentine has endeared himself to all, and particularly to those younger unadmitted clerks whom the exigencies of present-day work require to attend on the Master in Chambers. For them Master Ball always had a kindly word of encouragement, and the youngsters will particularly regret his departure. Sir Valentine was appointed a master in 1921, and since 1943 he has been Senior Master and King's Remembrancer in succession to Sir Ernest Arthur Jelf, who retired in that year. Sir William will, without a doubt, have a happy retirement, and will enjoy indulging those scientific inclinations which he has inherited from his father, the famous Loundean Professor of Astronomy. Sir William is succeeded by Sir PERCY REGINALD OWEN ABEL SIMNER, who has been a Master of the Supreme Court since 1922. Sir Percy is a distinguished ex-officer, having commanded a battalion of the West Yorkshire Regiment in the 1914–18 war, during which he was four times mentioned in dispatches and was decorated with the D.S.O. and bar. There is, moreover, none better qualified, from his knowledge and experience of the practice and the law, to succeed Sir William Ball. Solicitors will also welcome the appointment of Mr. CLAUDE HERBERT GRUNDY as a master. His genial kindliness to all, as well as his experience at the Bar, where he gained a reputation for expedition and thoroughness, eminently fit him for his appointment.

### Retirement of Judge Thesiger

MANY an advocate in the county courts must have wanted to know how the judge arrives at his conclusions. In the case of the best of judges, that is to say, one who is not completely but almost silent, one derives after assiduous attendance in his court inklings from his well-spaced remarks, but only a general instinct as to the way the wind is blowing. Some gratitude is therefore due from the profession to His Honour Judge THESIGER, who made one or two remarks on the subject when he gave a farewell speech on 16th October, in reply to Mr. T. J. W. TEMPLEMAN, for the solicitors practising in his court at Exeter, and Mr. M. A. MATHEW, the Registrar. Provided three conditions were fulfilled, Judge Thesiger said, the task of a county court judge was not difficult. The conditions were (1) that the facts of the various cases were put before him logically and clearly; (2) that the evidence was tested by cross-examination that was both searching and fair; and (3) that points of law were clearly and fairly represented, with due reference to the authorities. It is good to hear from the lips of the judge himself how much assistance he expects from the advocates practising in his court, and more particularly, that in ten years of office he has received co-operation in full measure. His Honour Judge Thesiger has been on the county court bench since 1931, when he was appointed to circuit No. 1, and he was later transferred to circuit No. 57. His many friends will wish him full enjoyment of his retirement.

### Women in the Lords

TWENTY-EIGHT years after the passing of the Sex Disqualification (Removal) Act, 1919, during which period women have invaded or been given the right to invade almost every sphere of man's activities, an attempt is being made to claim for women the right to one of the last of man's exclusive privileges, the right to sit and vote in the House of Lords. An unsuccessful attempt, it will be remembered, was made over twenty years ago by Lady Rhondda, who is a viscountess in her own right, to claim the right. The old method of procedure, by application to quarter sessions for permission under an Act of 1661 to present a petition to the Lords, has intrigued both lawyers and the lay public. The Act deals with "tumultuous assembly," and it provides that a petition cannot be presented without first obtaining the consent of three justices at quarter sessions. The present petition is addressed to "the Lords Spiritual and Temporal in Parliament assembled," and states that "divers matters of great moment and grave consequence affecting the well-being of the State come from time to time before your Lordships' House," and that there are no women to put forward, among other things, the woman's point of view for their Lordships' guidance. There are twenty-four peeresses in their own right, of whom twenty-two will have the right to sit and vote if the petition is successful. The determination of the protagonists in the coming controversy to use legal methods and avoid "tumultuous assembly" affords a pleasing contrast to the methods adopted in the 1913 campaign.

### Amendment of the Parliament Act

WHATEVER may be said as to the wisdom or otherwise of introducing a Bill as acutely controversial as one reforming the House of Lords at this juncture in history, the die is now cast, and the Legislature, and perhaps even the electorate, will soon have to ask themselves what useful purpose is served by

the proposed amendment of the law. So far, in all the thirty-six years of the Parliament Act's existence, the House of Lords has practised such restraint in using its powers under the written constitution as almost to establish an unwritten law that the power is only to be used in order to secure the revising functions of the Upper Chamber. In the more recent past, when legislation which a strong majority of the Lords might have been expected to reject has merely suffered revision at its hands, this wise restraint has been even more obvious. The present amending Bill is devoted to the negative task of reducing to one year the two years' maximum period during which the Lords can delay Bills which are not money Bills, rather than the constructive one of revising the composition of the House, promised in 1911 and still awaiting action. An agreed Bill which could accomplish this, and at the same time make Parliament as a whole more efficient, would be welcome at a time when the Government pleads, to every request for the introduction of urgent reforms, that Parliamentary time is not available.

### Income Tax and Change of Accounting Date

SOME useful information is published in the October issue of the *Law Society's Gazette* relating to a recent explanation given by the Board of Inland Revenue of the practice it follows where a permanent change is made in the date to which a trader or professional man makes his accounts. Reference is made to the duties of the Board under s. 34 of the Finance Act, 1926, as amended by s. 14 of the Finance Act, 1930, with regard to determining what period of twelve months ending in the income tax year immediately preceding the change is to be treated as the basis period of assessment for the income tax year during which the change is made. It is explained that under s. 34 (1) (*b*) the Board normally decide that the assessment is to be based on the profits of the period of twelve months ending on the new accounting date in the income tax year immediately preceding the change, i.e., on the date to which the trader or professional man proposes to make up his accounts in the future. In making a direction under s. 34 (2), the Board attempts to secure that the profits to be assessed twice, or to be omitted from the assessment, as the case may be, are " average " profits. This, as a rule, can only be secured by taking for the year to which s. 34 (2) applies some figure intermediate between the revised and unrevised figures, and it is the Board's normal practice to propose, subject to the concurrence of the Commissioners of Income Tax having jurisdiction in the particular case under s. 34 (3), the adoption of such an intermediate figure. The method of computing the intermediate figure is clearly explained in the Board's statement, with a detailed illustration by way of example.

### Tied Farm Workers' Cottages: Valuation

As a result of the Court of Appeal's decision in *Bomford* v. *South Worcestershire Assessment Committee* (1947), 40 R. & I.T. 87, the Central Valuation Committee has notified county valuation committees and assessment committees and rating authorities outside London that in view of the guidance in the judgments on certain hitherto doubtful matters, the committee has decided to amplify and revise Part C of its original resolution 77 with reference to s. 72 of the Local Government Act, 1929, which provides that, so long as a house is occupied as a dwelling-house for a farm worker, the gross value for rating purposes must be estimated by reference to " the rent at which the house might reasonably be expected to let from year to year if it could not be occupied and used as aforesaid." Among other useful explanatory notes on the amended resolution, it is stated that in the case of a tied farm cottage to which s. 72 applies, the judgments have made it clear that the gross value is not to be limited to the actual amount which the farmer may deduct from the wages of the worker in respect of his use of the cottage, but is the rent at which it might reasonably be expected to let from year to year, subject to the restriction that it could only be let to a farmer for the purpose of housing farm workers while employed by him in agricultural operations on his land. The amount of rent which a farmer might be expected to pay would thus be influenced both by (*a*) the knowledge that the tenancy would be subject to a restrictive covenant limiting the use of the cottage for the purpose of housing his own farm workers, and that the maximum sum he could recover for its use would be such amount as may be fixed from time to time under the provisions of the Agricultural Wages (Regulation) Acts, 1924–1940; and (*b*) a consideration of his willingness to pay more in rent for a tenancy of the cottage in order to accommodate one of his farm workers than the amount he could recover from the employee for the use of the cottage.

### The " Self-Employed " and National Insurance

THE MINISTER OF NATIONAL INSURANCE rendered a great service on 5th November, by explaining in a speech at the London Rotary Club the meaning of the new national insurance scheme as it will affect, next July, when it comes into operation, nearly two million self-employed workers. Their first duty, if not already insured, will be to register early next year. From the post office a simple form will be obtainable for registration, but registration is not compulsory, although insurance is. Some of the insured, such as married women and those with very small incomes, may be exempted from insuring at their own request. Everything will depend on the self-employed contributor stamping his own card, and it may be that in the case of the wealthier members of the professional classes the incentive will not be so strong as in the case of their less wealthy brethren. On them, no less than on the great majority who really need the scheme, will devolve the duty of co-operation in order to make the scheme a success. Mr. Griffiths stated that if a man is over sixty-five or a woman over sixty at the beginning of the scheme, he or she will not be in the scheme at all. If a man is over fifty-five at the beginning of the scheme or a woman over fifty and not already insured, he will have to contribute for ten years before being eligible for retirement pension. Those who enter the scheme at thirty, forty or fifty odd years will have no reduction in pension. All professional persons should study the scheme carefully, for, in the absence of sufficient staffs for enforcement, the success of the scheme may well depend on their voluntary support.

### Price Controls

IN our preoccupation as lawyers with the purely legal effects of the various rules and orders imposing maximum selling prices for commercial products and raw materials, we must not blindfold ourselves to any of the economic consequences which result from the controls. The simple result at which they aim is the checking of profiteering, but in view of the danger recently discussed by LORD TEMPLEWOOD of increased disrespect for law resulting from a multiplicity of prohibitions, it behoves us to scrutinize each order carefully in order to discover whether or no its advantages are nullified by other and unexpected consequences. The report of the working party on the light clothing industry, published on 29th October, seems to indicate that the system of price control at present in force in that industry has some unsatisfactory results. Makers of utility clothing are allowed to charge either a ceiling price or costs increased by a percentage, and the retailer is also allowed a specified percentage. It seems that the practical effect of this is to encourage the production of less useful products because the price allowed gives a particularly good return. More serious still is the result that avoidably high costs are encouraged because they bring higher profits in their train. The report states that the " costs plus " system discourages efficiency and encourages the " hoarding " of labour. This means a willingness to pay high wages and incur exceptionally high overheads. What this imports in the availability of labour and office accommodation for the professions lawyers know to their cost. The saddest part of it all is that the system has put a premium on inefficiency. " Output per man-hour " has fallen greatly since before the war, and is now much lower here than in the U.S.A.

### American Legal Aid

A DESCRIPTION was recently published in *Readers' Digest* of an interesting "Lawyer Reference Plan" which the Chicago Bar Association has administered for the past seven years in order to cater for the needs of legal service felt by persons of moderate means. The scheme has the further object of making better known the inadvisability of waiting to seek advice until after trouble has started. A recent survey, it seems, has demonstrated that three-quarters of the transactions in the U.S.A. involving points of law are carried through without any legal advice and that more than 100 million Americans have no access to any kind of legal assistance. Under the plan a person can obtain, for a small fee, an immediate appointment with an attorney qualified to handle his case. Mr. CHARLES LIND, who takes a chief part in administering the plan, has as many as forty to fifty visitors a day. The fee for consulting a lawyer is $3, but if the interview lasts over half an hour the charge is $5, even if it lasts the whole day. In spite of the plan there are many clients who still seek the advice of Mr. Lind after their contracts have been signed or mischief has been done. Another interesting fact disclosed in the article is that Mr. Lind manages to dispose of 80 per cent. of the inquiries immediately, and the Bar Association makes no charge for this service. There is no official price list for services, but $10 is the customary charge for drawing a one-page will and a divorce costs $100 plus $40 in court costs. In a year 16,000 telephone, post and personal inquiries are handled and 1,600 new clients are referred to lawyers. More than 300 attorneys have enrolled with the plan including some of the most eminent members of the Chicago Bar. There has been no tampering with the private relationship between client and attorney. Other cities, such as New York, Philadelphia, Los Angeles and Cincinnatti have followed Chicago's example. The result, it is stated, is not to increase law suits, but rather to prevent them. The plan presents interesting points of comparison and contrast with the English plan, the main contrast being that the latter is not yet in operation.

### Recent Decisions

In *R.* v. *Higgins* on 3rd November (p. 615 of this issue), the Court of Criminal Appeal (The LORD CHIEF JUSTICE, and HUMPHREYS and SINGLETON, JJ.) held that where an innkeeper had more than enough food for luncheon in his inn, some food being reserved for the evening meal and some for the next morning's breakfast, it might be reasonable to refuse food to a traveller because of the possibility of travellers coming later in the day, and the needs of those staying in the inn, and the requirements of his family and staff, but not the needs of residents in the town, who would not be travellers. Although an innkeeper was not allowed to pick and choose his guests he was entitled to take orders from travellers by telephone or letter, and to provide for them, and the chairman of quarter sessions had been wrong in directing the jury that an innkeeper was not entitled, having booked all his tables, and having food in the house, to refuse to serve a traveller, because that meant picking and choosing. It was further a misdirection to say that it would be an end of the case if the jury found that sandwiches were offered and refused, as it would be for the jury to say whether the offer of sandwiches was an offer of reasonable refreshment in the circumstances.

In *Beauchamp* v. *London County Council* on 5th November (*The Times*, 6th November), CASSELS, J., in giving judgment for an infant plaintiff in an action for damages for personal injuries causing the loss of a finger, held that the receipt by the plaintiff of compensation from the London Passenger Transport Board, who had been his employers at the date of the accident, and his signature of a printed receipt, which he had not read, together with his ignorance of workmen's compensation and of the fact that he could proceed against the defendants at common law, as well as the fact that it was not for the infant's benefit to receive the compensation and forgo his claim against the defendants, resulted in his not being barred by s. 30 of the Workmen's Compensation Act, 1925, from bringing his action at common law.

VAISEY, J., in a case on 6th November, arising out of the will of the late Lord Islington, held that a condition requiring his grandson after attaining the age of twenty-one to adopt the name and arms of Poynder, in substitution for his present name, was void on the ground that the consequences of the forfeiture were ambiguous and uncertain and that it was contrary to public policy to require a young man who was the heir to a peerage and not much more than twenty-one years of age to abandon his patronymic.

# PROSECUTION FOR OFFENCES UNDER THE FURNISHED HOUSES (RENT CONTROL) ACT, 1946—I

(CONTRIBUTED)

IT is generally well known, of course, that the Rent Acts, 1920–39, imposed limitations on the rent of houses let furnished and made it a criminal offence for a landlord to charge an "extortionate" rent, an offence for which he rendered himself liable on summary conviction to a fine up to £100. Such limitations were imposed by s. 10 of the Rent Act, 1920 (only verbally amended by s. 10 (2) of the Rent Act, 1923) as to "old control" dwellings, and by the same as amended by Sched. I to the Rent Act, 1939, as to "new control" dwellings. It cannot, however, be said that such enactments proved to be any great deterrent to determined landlords, owing to the highly indefinite and indeterminate meaning of the word "extortionate."

In framing what are offences against the Furnished Houses (Rent Control) Act, 1946, Parliament was far more careful as to the phraseology which it used.

Let us, then, see what are the offences created by this Act. They are set forth with the clearest possible precision. They are dealt with in s. 9 of the Act, and they fall into two classes, the one far more serious than the other. Let me take the less serious class first.

Under s. 2 (1) of this Act a tribunal, on reference of a contract of tenancy to them, may serve a written notice on the landlord, requiring him to give them, within the time therein specified, such information as they may reasonably require regarding such of the prescribed particulars relating to such contract as are therein specified. The prescribed particulars are those set forth in Sched. I to S.R. & O., 1946, No. 781, made by the Minister of Health on 30th May, 1946, under the power given to him for the purpose by s. 8 of the Act.

True that in *R.* v. *Paddington and St. Marylebone Rent Tribunals and Others, ex parte Bedrock Investments, Ltd.* [1947] 2 All E.R. 15; 91 SOL. J. 310—the case which decided that rent tribunals have no power to reduce below its standard rent the rent of any dwelling which is within the protection of the Rent Acts—Atkinson, J., observed that the forms sent by tribunals under this Act of 1946 to complaining tenants were framed on the wrong basis. They asked, not the relevant question what according to the contract the landlord was to provide, but merely what services or furniture he provided in fact. But, rightly or wrongly framed, such forms do but follow the prescribed particulars, and, so long as the latter remain unreplaced by a new set of particulars prescribed by the Minister, they remain the forms which the tenant has to fill in.

If a landlord fails without reasonable cause, within the time limited in that behalf, to comply with the provisions of such notice, s. 9 (2) steps in; enacting that "he shall be guilty of an offence and liable on summary conviction to a fine" up to "£20 or to imprisonment" up to "three months, or to both" the one and the other.

Whether the prescribed particulars ask the relevant questions mentioned by the learned judge or not, they still,

as already stated, remain the prescribed particulars until replaced by a new set, and, that being so, it will hardly be suggested that the observation of the learned judge constitutes a "reasonable cause" for a landlord's failure to comply therewith within the meaning of the foregoing provision.

And now for the far more serious offence created by this Act of 1946. Under s. 4 (1) of the Act it is enacted that "Where the rent payable for any premises is entered in the register under" s. 3, after having been decided by the tribunal under s. 2, "it shall not be lawful to require or" to "receive"—

Either (*a*): "On account of rent for those premises in respect of any period subsequent to the date of such entry (or, in a case where a particular period is specified, in respect of that period) *payment of any sum in excess of the rent so entered*":

Or (*b*): "As a condition of the grant, renewal or continuance of a contract to which this Act applies relating to such premises, *payment of any fine, premium or other like sum, or any consideration, in addition to the rent.*"

If any person either requires or receives any payment or any consideration in contravention of s. 4, s. 9 (1) steps in; enacting that he "shall be guilty of an offence and liable on summary conviction to a fine" up to "£100 or to imprisonment" up to "six months or to both" the one and the other.

A striking difference between punishment for offences against the Rent Acts and punishment for offences against this Act will at once have been observed. For, whereas the punishment under the former does not include imprisonment, the punishment under this Act of 1946 does.

There is another curious difference between the Rent Acts and this Act. For, whereas s. 11 of the Rent Act, 1933, which remains as it stands for the purpose of the Rent Act, 1939, gives power to local authorities to prosecute for offences against the Rent Acts but does not confine such power to local authorities, this Act of 1946 by its s. 10, whilst giving the local authority power to institute proceedings for offences against the Act, continues: "and no such proceedings shall be instituted otherwise than by them." Thus no tenant can himself prosecute the landlord for an offence against this Act.

(*To be concluded*)

# SERVING TWO MASTERS

*Respondeat superior* is obviously a doctrine of increasing importance in days when so many running-down cases occupy places in the cause lists, and when the abolition of the basic petrol ration bids fair to upset the normal proportion of commercial to owner-driven vehicles on the roads. A plaintiff's allegation of negligent driving by the servant or agent of the defendant may sometimes be met by the defence that the driver in question was not at the material time the servant or agent of the defendant—that the latter, in fact, is not the *superior* answerable according to the maxim. This may be so because, as in *Storey* v. *Ashton* (1869), L.R. 4 Q.B. 476, a person who was normally the defendant's servant has taken his master's vehicle on what is sometimes called a frolic of his own, completely outside the scope of his employment. But there are other circumstances in which this situation may arise, for "no one disputes," says Viscount Simon, L.C., in *Century Insurance Co.* v. *Northern Ireland Road Transport Board* [1942] A.C. 509, at p. 513, "the proposition that a man may be in the general employment of X and yet at the relevant moment, as the result of arrangements made between X and a third party, may be the servant of the third party so as to make the third party and not X responsible for his negligence." Such a proposition naturally may afford either a defence in proceedings against X, or the basis of a claim against the third party in respect of his vicarious responsibility.

The *Century* case has become the leading authority of a line which began in 1840 (*Quarman* v. *Burnett*, 6 M. & W. 499) with the failure of an attempt to prove that a coachman, hired with his horses by two ladies to drive their coach and wearing their livery, was, in negligently leaving his horses unattended while he replaced the livery in their house after driving them home, in the particular service of the ladies so as to fix them with liability. Fifty-eight years later, Lord Russell, C.J., succeeded, with difficulty, in distinguishing *Quarman* v. *Burnett* when faced with a state of facts differing materially only in that the defendant before him, the hirer of the servant, was actually in the vehicle at the time of the accident and that the horse concerned was the defendant's own and was to the defendant's knowledge unused to traffic (*Jones* v. *Scullard* [1898] 2 Q.B. 565). Lord Russell had, however, by that time the assistance of a decision of the Court of Appeal (*Donovan* v. *Laing Wharton & Down Construction Syndicate, Ltd.* [1893] 1 Q.B. 629), and an observation of Bowen, L.J., in that case has been the foundation of the treatment of the topic by subsequent authorities. "By the employer is meant the person who has a right at the moment to control the doing of the act." The Court of Appeal held in *Donovan's* case that the general masters of a crane driver had, in the circumstances of that case, parted with the power of controlling him with regard to the matter in which he was engaged, and that therefore they were not liable for his negligence while so employed. In *Jones* v. *Scullard* Lord Russell evolved the complementary proposition that since the hirer had acquired the right to control the servant, he was vicariously responsible for the servant's negligence. Lord Uthwatt, in *Mersey Docks and Harbour Board* v. *Coggins & Griffiths* (*Liverpool*), *Ltd.* [1947] A.C. 1, emphasises that the proper criterion is the *right* to control the servant in the manner of the execution of the act, and criticises as incorrect the test of actual control suggested by the Court of Appeal in *Nicholas* v. *Sparkes* (1943) [1945] 1 K.B. 309*n*.

The distinction between cases where the master parts with the right to control the servant and those where he retains it may be expressed by saying that sometimes the *servant* is lent or hired and sometimes merely his *services* or the use and benefit of his work. This way of putting it obviously appeals much more to Lord Wright, for instance, than the "mere catchword" control, as he calls it (see [1942] A.C., at p. 515).

There is general agreement in all the cases on two points:—

(1) that there can be no transfer of the servant himself without his consent, either express or implied;

(2) that the presumption is against there being a transfer of the servant. "A change of employer must always be proved in some way, not presumed," says Lord Porter in the *Mersey* case. Viscount Simon in the same case went further and referred to the burden of shifting the *prima facie* responsibility to the alleged temporary master as being, in his opinion, a heavy one which can only be discharged in quite exceptional circumstances.

It was with questions of *onus* (perhaps more accurately called presumption) that Streatfeild, J., was largely concerned in the first reported case tried before him, *Chowdhary and Another* v. *Gillot and Others* [1947] 2 All E.R. 541. It is an interesting case. The plaintiff took his car to a company's works to have it repaired and serviced, as he had frequently done before. Having given the necessary instructions, he asked to be driven to a nearby station in his car, and the company's representative detailed one of their drivers to carry out this service. On the way to the station there was a collision caused, as the learned judge found, by the negligence of the company's driver. The plaintiff sued (*inter alios*) the company. The report deals with the position arising from the company's defence that their servant, and not merely his services, was transferred temporarily to the plaintiff so that he became the plaintiff's particular servant for whom they were not answerable.

Streatfeild, J., examined the authorities and applied them to the facts before him in two stages. The heavy burden of proof referred to by Viscount Simon was obviously on the company, but it was contended on their behalf that this was

discharged by pointing to the fact that only the driver, not the vehicle, was lent, and that the plaintiff, the owner of the car, was present in it and retained possession of it and the right to control the manner of the driving. Several cases dating back to 1837 (*Wheatley* v. *Patrick*, 2 M. & W. 650) indicate that an owner's presence in his vehicle, driven by another, may be equivalent to actual driving, though their facts differ widely from those in the present case. His lordship applied the opinion of the Privy Council in the New Zealand appeal of *Samson* v. *Aitchison* [1912] A.C. 844, and held that in these circumstances the burden of proof was cast back on the plaintiff to show that he had abandoned or contracted himself out of the right to control the car.

At this point the case begins to bear a resemblance to *Jones* v. *Scullard*, *supra*, which does not appear to have been quoted. A vital distinction immediately emerges, however. Dr. Chowdhary had before the accident delivered the car to the company for repairs. Considering the surrounding circumstances the learned judge concludes that the company thus became bailees and that the plaintiff had no right during the bailment to control the bailee's servant. In the result, it is held that the driver did not become the particular servant of the plaintiff.

A further matter touched on in the report is interesting for its relation to a similar ingredient in earlier cases. On behalf of the company it was sought to show that Dr. Chowdhary had contracted for the repairs on terms which included a stipulation that if a customer's car was driven at any time by one of the company's employees the employee should be deemed for all purposes the servant of the customer. For reasons which are immaterial here this contention failed, but it is worth noticing that if such a condition had applied it would have been a complete answer to the plaintiff's claim against the company. They were both parties to the contract and were at liberty to regulate their own rights *inter se*. In this respect the earlier case of *Mersey Docks* was on an entirely different footing, for the claim was there made by a person who was not a party to any contract. The mixed question of fact and law as to whose servant an individual is at a given time cannot by means of an agreement be concluded against someone who was not a party to the agreement (see *per* Lord Porter in the *Mersey* case).

# CRIMINAL LAW AND PRACTICE

## THE CRIMINAL JUSTICE BILL

It is a pity that the news of the excellent reforms that are proposed in the recently published Criminal Justice Bill should have been overshadowed to some extent by a controversy in the correspondence columns of *The Times* and elsewhere on the issue of capital punishment. When all the arguments are marshalled as to deterrent effects, the protection of society on the one hand, and the barbarity of the punishment on the other, it is clear that such an important change cannot be effected until public opinion is ready for it, and the only guide on this subject must be the verdict of Parliament. The question may well be raised in the course of debates on the Bill, and it is certainly not irrelevant to the questions of corporal punishment which the Bill raises. It may also be raised on consideration of the proposal in the Bill that sentence of death may not be pronounced if it appears to the court that the convicted person was under eighteen when the offence was committed.

The general question of corporal punishment is more controversial than any of the other proposals in the Bill, for although the provisions which contain the proposed reforms substantially reproduce those in the earlier Bill of 1938–39, much has happened since then to modify, if not to alter, public opinion on the subject.

It is proposed to abolish the powers of criminal courts to pass sentences of whipping. A Departmental Committee on Corporal Punishment reported in favour of this proposal before the war, but it did not end the controversy, and only last week a High Court judge testified in court to the salutary effect corporal punishment had upon him as a small boy. A distinction to which the attention of controversialists in Parliament will no doubt be directed is that between the administering of punishment by a parent, and that administered by an official with all the safeguards that the law can devise. With regard to the corporal punishment of adults, the power to award it for serious offences against prison discipline is retained. In the Bill it is limited to the maximum proposed in the departmental committee's report—eighteen strokes of the "cat" or birch for a prisoner over twenty-one years of age and twelve strokes for a prisoner under twenty-one.

Alterations are also proposed in the punishment of young offenders by way of imprisonment. A court of assize or quarter sessions, it is proposed, will not be able to impose imprisonment on a person under fifteen (the age at present is fourteen), and a court of summary jurisdiction is not to have power to award imprisonment in the case of a person under seventeen years of age. The present law is that the court has power to award imprisonment if it certifies that he is too unruly or depraved to be detained in a remand home. Furthermore, no court is to have power to award imprisonment to any person under twenty-one, unless it concludes that there is no other appropriate method of dealing with him. Further provision is made for future Orders in Council to be made, if thought necessary, prohibiting the sentencing to imprisonment by magistrates' courts of persons under twenty-one, or such lower age as may be specified.

State remand homes are provided for, to which persons between the ages of fourteen and twenty-one will be sent when on remand or awaiting trial after committal. Young persons over seventeen are under the present law sent to prison. This provision, however, will only apply when and where remand homes are available, and it is obvious that under present conditions its full effect will not be felt for some time to come.

As to Borstal, it has been found that the raising of the age limit to twenty-three from twenty-one in 1936 has not been a success and the age limit of twenty-one is to be restored. There will be two types of sentence for persistent offenders. There will be a short period of training and a long period of preventive detention. There is also provision as to the release of offenders on licence, subject to supervision by an appropriate society for a period of after-care. The 1938 proposal to allow courts of summary jurisdiction to sentence to Borstal treatment is omitted from the Bill, as the provision of more remand homes will meet the difficulty.

Detention centres for persons between the ages of fourteen and twenty-one are also to be provided. The normal sentence to these centres will be three months, but in exceptional cases this period may be increased up to a maximum of six months. At these centres hard work and discipline will be provided as a deterrent.

On the subject of general punishment by imprisonment, the abolition of the distinction between hard labour and ordinary punishment is little more than formal, as the distinction has long ceased to exist in practice. The abolition of penal servitude is almost equally formal. The three divisions of imprisonment are also abolished, and a new method of classification which is more adaptable to individual cases is substituted.

One of the clauses which will certainly rouse controversy is cl. 33, which enables a magistrates' court, once a person who is charged with an offence is brought before it, to order that such person's fingerprints shall be taken by a constable, who is to be entitled to use such reasonable force as may be necessary. It is difficult to see why a person who is presumed to be innocent should be submitted to this indignity, or why the police should be licensed to use any force in such circumstances.

As to probation, the 1938 proposal to make a conviction an essential condition before a probation order can be made is omitted from the Bill, but it is provided that probation orders must last at least a year.

The name of Viscount Templewood, to whose work as Home Secretary the 1938 Bill was due, will be for ever associated with this humane and civilised measure. It is therefore fitting to conclude with the words with which he concluded his article in the *Observer* of 9th November on the new Bill, which substantially reproduces his own measure: " . . . the Bill's proposals make a very notable advance in our penal methods. They will help the courts to deal more successfully with young offenders. They will make the sentences more likely to fit the criminal. They will strengthen the protection of the community against habitual crime. Perhaps, most important of all, they will go far to rationalise our penal system and to remove from it most of the survivals of the ignorance and callousness of less instructed generations."

# COMPANY LAW AND PRACTICE

## THE EXCHANGE CONTROL ACT AGAIN

LAST week the general nature of those provisions of the Exchange Control Act, 1947, which bear to some extent on company law were reviewed, and it was pointed out that s. 8 of the Act prohibited, without the permission of the Treasury, the issue in the United Kingdom of any security, or the issue anywhere of a security registered in the United Kingdom, unless both the person to whom the security is issued and, if he is a nominee for any person, that person, are resident in the " scheduled territories."

This section, however, also contains a further and not uninteresting restriction, the object of which is apparently to prevent a person resident outside the scheduled territories getting an allotment of new shares in a company by subscribing the memorandum of association of that company.

The machinery which the section adopts to attain this object (disregarding that part of the provision applicable to Northern Ireland) is as follows: It is provided that the subscription of a memorandum either by a person resident outside the scheduled territories or by a nominee for such person shall, unless the subscription is made with the consent of the Treasury, be partly invalid and partly valid.

It is to be invalid so far as it would in the ordinary way make him a member of the company or a shareholder in the company on the memorandum being registered, but that provision is not to affect the validity of the incorporation of the company.

The incorporation of the company is, however, the only thing which is left unaffected by the section, for it goes on to provide that, if by reason of its provisions the number of the subscribers to the memorandum who on registration become members of the company is less than the minimum number required by the Companies Act to subscribe the memorandum, the company is to be in the same position as if it had started life with the proper number of members, but, immediately after that moment, it had had the number of its members reduced below the minimum required by the Companies Act.

If, therefore, in the case of a public company, the company is registered with seven subscribers to the memorandum and one of those subscribers is not resident in the scheduled territories and that position remains unchanged for more than six months after incorporation, each of the six members of the company would apparently be, under s. 28 of the Companies Act, personally liable for all the debts of the company contracted by it after the expiry of the period of six months. Similarly the company will be liable at any time to be wound up under s. 168 (4) until the number of members is increased to the minimum number.

It is most unlikely that a public company would in fact carry on business for more than six months with no members other than the subscribers to the memorandum, but it is perfectly possible to imagine the case of a private company with two subscribers starting to carry on business immediately on incorporation, and in that case, if one was resident outside the scheduled territories and no new member was admitted, the other subscriber, from the expiration of six months from incorporation, would be virtually carrying on the business on his own account and would be personally liable for all the debts incurred in so carrying it on, if cognizant of the facts.

In fact, it is extremely unusual for the subscribers to the memorandum to take more than one share each, and in many cases they never even become registered in respect of the share set opposite their names at the foot of the memorandum, for if the whole of the shares are allotted to other persons they cease to be under any liability to take their one share.

Even without the latter part of the section, to which reference has been made above, it would seem to be impossible for a non-resident to acquire shares by means of subscribing the memorandum of a company, for even if he did so it would still be necessary, in order for him to become entitled to the shares, for them to be allotted to him, and that proceeding would presumably be an issue of securities within the meaning of the earlier part of the section.

Nor is it essential for the Act expressly to validate the incorporation of a company where one of the subscribers is a non-resident, for by s. 15 of the Companies Act the certificate of incorporation is conclusive that the company has been duly incorporated. In the absence of the latter part of this section a rather curious situation would arise; assuming that one subscriber to the memorandum was a non-resident, he would on the registration of the memorandum, by virtue of s. 25 of the Companies Act, become a member of the company, though he would be unable without Treasury permission ever to have allotted to him any shares in the company.

Incidentally the provisions are so expressed as to have the effect of preventing a non-resident becoming a member of a company limited by guarantee by means of subscribing the memorandum of association, though there does not seem to be an express provision preventing such a person becoming a member of a company limited by guarantee and not having a share capital subsequently to the incorporation of the company. This, however, is unlikely to prove a matter of any practical importance. But it may possibly involve certain difficulties if it is overlooked that there is under this Act an express prohibition of a non-resident of the scheduled territories subscribing his name to a memorandum without Treasury permission.

# A CONVEYANCER'S DIARY

## WARDS OF COURT

THE jurisdiction whereby an infant can be made a ward of court is a most valuable protection of the infant's property and person, but like most processes of the law it is open to abuse. Such abuse is doubtless very occasional, but in this instance it can produce consequences of an unusual nature. The difficulty is that once an infant has become a ward of court there is often no machinery for changing his status and so discharging the guardian from the obligation of consulting the court in all those matters which the court seeks to control for the benefit of the ward. Moreover, the opportunities for examining the merits of an application as the result of which an infant becomes a ward are sometimes very limited. There are numerous ways in which an infant can become a ward. It is sufficient, for example, that the infant should be a plaintiff in an action in the Chancery Division, even if there is no property within the jurisdiction in which the plaintiff is interested. It is true that in such a case there is some protection against abuse, for it is open to any person to apply to the court for an inquiry whether it is for the benefit of the infant that the action should be prosecuted. If upon inquiry it is found that the infant would not benefit, not only may the next friend of the infant be ordered to pay the costs but the

action itself may be stayed. That would be an end of it, for the wardship which attaches to the infant at the commencement of proceedings would then be discharged by the order staying the action. But very different considerations arise when proceedings are brought in relation to an infant which affect property in which the infant is beneficially interested. The most usual method of making an infant a ward of court is the settlement of property on the infant, followed by an action to administer the trusts of the settlement. From the moment that the action is instituted the infant becomes a ward, and it is quite immaterial for this purpose whether the infant is in the tutelage of his parent or of a properly constituted guardian (and so *prima facie* enjoying all the care and protection normally afforded to an infant), or whether he is in fact, as well as in contemplation of law, in need of such care and protection. An action to administer the trusts of a settlement on behalf of an infant is clearly an action brought for the infant's benefit, however small either the trust fund or the infant's share therein may be, and as such it will never be stayed on the grounds of impropriety. The result is that the infant who has *ipso facto* become a ward on the institution of proceedings will remain a ward on their termination, and will continue to be a ward until he attains his majority. Any person, therefore, who cares to settle a small sum on an infant has it in his power to make the infant a ward and subject the infant's parent or guardian to the supervision of the court.

The consequences of such an action should not be regarded in too serious a light, but they may be annoying enough. If the infant has a parent or guardian living within the jurisdiction, the court does not interfere for the purpose of appointing a person to discharge the duty of taking care of the infant's person, but the parent or guardian is nevertheless subject to the control of the court in the discharge of that duty. Where the parent or guardian can satisfy the court that he is a proper person and that there is no real reason for interfering with his control over the ward (circumstances which should not be difficult to establish where the proceedings are brought for the purpose of annoyance) it is unlikely that the court will issue directions as to the maintenance or education or day-to-day life of the infant. The trouble starts if the parent or guardian wishes to take the ward out of the jurisdiction of the court—a phrase which includes a holiday in Scotland or Eire. An application must be made to the court each time it is desired to remove a ward out of the jurisdiction, however temporarily, and the application is usually only granted on an undertaking being given to bring the ward back within a prescribed time. It is this rule, rigidly enforced, which renders wardship an inconvenience to a parent or guardian and is commonly the motive force behind proceedings tending to make an infant a ward of court. Under the present practice the parent or guardian may have no opportunity at the original proceedings of disputing the desirability of the infant becoming a ward of court, and thereafter he must put up with the consequences of the situation.

### CONSTRUCTION OF INFORMAL DOCUMENTS

The recent case of *Branca* v. *Cobarro* [1947] 1 K.B. 854; 177 L.T. 332, was concerned with the familiar question whether an informal document, prepared by the parties without professional assistance, did or did not constitute a legally binding contract. The document in question, which was described as an agreement, contained an agreement to purchase a mushroom farm. Its terms are of no interest except for the concluding clause, which ran as follows: "This is a provisional agreement until a fully legalised agreement, drawn up by a solicitor and embodying all the conditions herewith [*sic*] stated, is signed." The document was signed by both parties. The plaintiff paid the deposit required by the document, but failed to pay the first instalment of the purchase price and repudiated the bargain. He then commenced an action claiming a declaration that there was no concluded contract between the parties, and the return of the deposit he had already paid. It was urged on his behalf that a provisional agreement, described as such, could not be the same thing as a final agreement. This argument appears to have some weight, in that it appears to be difficult to see why the parties should have contemplated the drawing up of a formal contract of sale if the informal document was to constitute a contract between them. The Court of Appeal, reversing the decision of Denning, J., at the trial, rejected this argument and held that the informal document amounted to a completed contract. This decision was based, rightly in my respectful submission, on the wording of the document, and indeed the case raises no point of principle. It appeared to the court that the combination of the words "provisional" and "until" imported an intention that the informal agreement should have some effect until it could be superseded by the more formal contract which the parties contemplated, and as in the circumstances of the case all the necessary terms to constitute a contract for the sale of land were contained in the document, the parties were bound by it. As I have already said, no principle emerges from the decision, which went on the facts alone, but I think the case is worth notice for the reason that it shows how difficult it may sometimes be to construe an informal document, and how dangerous it is to jump to the conclusion that any sort of qualification contained in such a document has the effect of rendering it of no legal effect. Authorities may help with certain phrases, such as the familiar "subject to contract," but the lay pen indulges in such diverse phraseology when seeking to perpetuate the parties' intentions that the only safe rule in approaching the construction of informal documents is to treat each case as an individual problem, and to try to extract the meaning from the document as a whole rather than to rely on one set of words as colouring the whole transaction. That this is not an easy task, the decision of Denning, J., and the contrary conclusion of the Court of Appeal in this case amply show.

# LANDLORD AND TENANT NOTEBOOK

### GENERAL WORDS IN NOTICE TO QUIT—I

THOUGH the validity of a notice to quit which after naming a date goes on "or at the end of the year of your tenancy which shall expire next after the end of one half-year from the date of service of this notice" has been recognised for close on two centuries, I do not think that all the possible consequences of adopting this form have yet been examined. The party who has served it may relax, confident that he is the author of an instrument which will put an end to the contract. But if when the date specified arrives he, to take an extreme instance, issues proceedings and finds that the contract is not at an end, can he, in the light of the information acquired, rely on the notice as effectively terminating the tenancy on a date covered by the "general words"? As far as I know, no case has yet arisen to decide this point.

The arguments which suggest themselves may be said to be as follows. In favour of the giver of the notice: This is the very contingency for which I sought to provide. In favour of the recipient: No; you were entitled to take time to complete your inquiries about when the term could be made to expire but, having come to the conclusion that it was on the date specified, and having acted accordingly, you thereby elected and are bound by your election.

I propose to discuss the merits of these arguments in the light of the reasoning underlying the judgments given in a number of authorities, the earliest being *Doe d. Phillips* v. *Butler* (1797), 2 Esp. 589. But if what was decided in that case was clear, how the conclusion was reached is not reported. A landlord to whom much rent was owing served notice to quit the premises "at the end or expiration of the current year of your tenancy thereof, which shall expire next after the end of one half-year from the date hereof. Dated this 20th day of June, 1796." Lord Kenyon's reasons for holding this notice sufficient are not given; which is the more regretable because of a number of other omissions, namely, the

omission of any date in the notice itself, which was thus in general words only, not one with general words in the alternative; and the omission from the statement of facts not only of the date of service, but of the date on which, in the action, tenancy was said to have ceased and trespass commenced. The action was heard on 29th November, 1797, which suggests that the landlord may have waited till the notice, if valid at all, must have taken effect.

A few years later the same learned Chief Justice tried *Doe d. Matthewson* v. *Wrightman* (1801), 4 Esp. 5, in which the notice, served on a 29th September, specified " on the 25th day of March, or the 8th day of April next ensuing." Dealing with an argument that the notice was void altogether, the learned judge said it was clearly intended to meet the possibilities of the holding having commenced on Old Ladyday or New Ladyday. The point was then taken that the lessor must, even so, show that the tenancy had commenced on one of such days and which. (This is, of course, of some interest for present purposes.) Lord Kenyon rejected this argument too, holding that it was sufficient to prove having given six months' notice to quit and that the ejectment had been brought after that time was expired; if he had mistaken the commencement of the defendant's tenancy so that his notice to quit was, for that reason, wrong, the onus of proving the true time of the commencement of the term is on the defendant, who thereby defeats the plaintiff's right to recover. This authority gave approval to notices in the alternative as regards dates; but it seems clear that the landlord must have waited till after 8th April before starting proceedings.

Next, I take *Doe d. Digby* v. *Steel* (1811), 3 Camp. 115, in which a landlord's executors served a notice on 18th December, 1810, calling upon the tenant to quit " on the 24th June, 1811, provided that the tenancy originally commenced on the 25th day of December, or otherwise to quit at the end of the year of your tenancy which shall expire next after the end of half a year from the date hereof." (The last words should, of course, have been " from the service hereof ": see *Crate* v. *Miller* [1947] 2 All E.R. 45 (C.A.) and 91 Sol. J. 379; but nothing turned on that in this case.) This, at all events, is a clear case of a specific date with general words indicating the alternative. It was admitted in the action that the commencing date had been a 25th December, not a 24th June; and Lord Ellenborough, without going into reasons, held that the notice was sufficient. Again, this merely demonstrates the validity without indicating what might happen if an action had been brought too soon.

*Doe d. Huntingtower* v. *Culliford* (1824), 4 Dow. & Ry. 248, is a clear case of a specific date plus general words, a notice dated 27th September served on 28th September having named " at Ladyday next, or the end of the current year," but argument centred round the question whether the recipient could have been left in doubt whether he was to go in two days' time or at the end of six months. It was held that he had had no occasion to be misled, for he should have ignored the possibility of a two days' notice.

*Hirst* v. *Horn* (1840), 6 M. & W. 393, an action for double value, also exemplified the operation of such a notice, and the example is a better one for present purposes in that there could be no question of ignoring possibilities as being absurd; also, we have some judicial utterances which may prove useful. The notice was served on tenants on a 1st January, requiring them to quit " on 1st July next, or such other day as their holding should expire next after the expiration of half a year from the receipt of that notice." Abinger, J., described this as " the ordinary notice, which has been adopted *in order to prevent the tenant from turning round* and setting up a different commencement of the tenancy," adding, " we must suppose that the tenant knew the time of its expiration as well as the landlord." According to Parke, B., the form had " long been adopted in order *to prevent the effect of any mistake* in the statement of the time when the tenancy expires."

# TO-DAY AND YESTERDAY

## LOOKING BACK

Among the Benchers elected at Gray's Inn on 12th November, 1800, was Samuel Romilly. Six days previously he had been called within the Bar as King's Counsel. He was then a barrister of seventeen years' standing. At the time he took silk he was making just over £2,000 a year and with income tax at 2s. in the £ this still left him a comfortable income. When he ceased to be a junior there was inevitably a slight drop in his earnings, but by 1802 he was the busiest Chancery leader. One who made his acquaintance in that year declared that he " stands at the head of the profession (as I am informed by everyone) both in point of legal accomplishments, general information and respectability." He was considerate and encouraging to his juniors, though intolerant of incompetence and sometimes irritable. In 1803 he was chosen Treasurer of Gray's Inn. His political career began in 1806 when he became Solicitor-General in the Ministry of All the Talents and entered Parliament as member for Queenborough. Early in the following year the short-lived administration came to an end, but Romilly remained in the House of Commons. In 1808 he opened the campaign, which has brought his name enduring lustre in the history of English law, to reform criminal justice. Over 150 offences then carried the death penalty. Thenceforward the main goal of his Parliamentary labours was to reduce this indiscriminate slaughter. At the time of his tragic and untimely death in 1818 he had attained few tangible results but his work and his inspiration were not long in bearing the fruit he had desired.

## GOLFERS AT LAW

The artist who sketched the distinguished guests at the recent dinner to the Ryder Cup team gave a place of honour in his collection to an eminent legal personality whom he described as " Viscount Simon—on golf topics no Simple Simon." Although he did not devote himself to the game early in life, Lord Simon by the time he was Foreign Secretary was a very formidable proposition on the course. He was nominated Captain of the Royal and Ancient Golf Club and he won the Parliamentary Golf Handicap. He once declared that he had an ambition to be the first man to go round St. Andrews in fewer strokes than his age; this, he added modestly, he hoped to accomplish by the time he was 103. He also once suggested an idea for an unloseable ball: " My invention is a golf ball constructed like a Mills bomb which, every ten seconds, emits a squeak. You save time on the round; you save temper." The game exercises an extraordinary fascination for many of the acutest legal minds. Lord Justice Scrutton was particularly eminent in its pursuit, which he practised on the Woking course. In a shipping case, counsel once explained to him the distance between two steamers as being about that of the third hole at Woking. As a small boy Abe Mitchell acted as his caddy. It was he who when a new silk (now judicially eminent) was making his ceremonial bows in the Court of Appeal, exclaimed encouragingly " Fore! " thereby causing an embarrassed misunderstanding, for the silk imagined he was being invited to made a fourth bow, and did so accordingly.

## SPEAKING OF THE GAME

In Mr. W. B. Maxwell's book of memoirs describing the social scene in the years before the 1914 war there is an amusing account of the golf of the first Lord Halsbury, playing on a miniature course at Homburg. He was not an accomplished player, but his style was admirable when his ten-year-old caddie would make him count a second stroke after his ball had been pulled from under the low-growing branches of a laurel: " A harsh decision on the part of the caddie," he would say, " and I cannot but urge strongly that if the ball was playable in law it was not playable in fact. Then how can one equitably be penalised, as if committing a misdemeanour when only doing that which is unavoidable and inevitable? " Not very long ago in the High Court in Dublin a King's Counsel had occasion to explain the game of golf minutely to Mr. Justice Hanna, illustrating his argument with a set of clubs and balls. He described the game as one " of endeavouring to drive a ball into a very small hole with weapons very ill adapted to the purpose." Flicking the driver, he remarked: " I regret that in the confined space of this court I cannot give you an adequate illustration with this weapon of driving off." The ball he described as " a small but highly unruly object, a hard object and not a very pleasant thing to be hit with." He added that the vast majority of golfers were very little skilled and the less skilful they were the greater was the tendency to propel a ball in the wrong direction. One feels how much Lord Simon, when at the Bar, would have enjoyed opening a case like that.

# COUNTY COURT LETTER

### Warranty of Dog

In *Furber* v. *Fletcher*, at Birmingham County Court, the claim was for £11 as damages for breach of warranty on the sale of a pedigree bulldog. The counter-claim was for £4 as the balance of the purchase price. The case for the plaintiff was that in May, 1947, he paid £20 for the dog, which the defendant had represented as "a good show dog." This implied that, barring any accident of congenital sterility, the dog would be good for breeding. Unknown to the defendant, however, the dog had had an operation making it incapable of breeding. Under a Kennel Club rule, the dog was therefore liable to disqualification in any show. The defendant's case was that she had previously bought the dog for £15, and the vendor gave her the pedigree and some prize cards of the Birmingham and Midland Counties Bulldog Club. His Honour Judge Forbes observed that none of the documents identified the dog to which they were awarded. The dog's condition might have eluded the vigilance of the club, or possibly the cards were never awarded to any dog. Judgment was given for the plaintiff for £11 and the counter-claim was dismissed, with costs.

### Devolution of Statutory Tenancy

In *Gill* v. *Tustain*, at Shipston-on-Stour County Court, the claim was for possession of a cottage at Bourton-on-the-Hill. The plaintiff's case was that she became entitled to the cottage in 1928, on the death of her parents. Owing to ill-health, she was unable to work as a shorthand-typist. If she could retire to the cottage, her health might improve. The defendant was a single man, with relatives in the district, and it would be no hardship to him to move. The case for the defendant was that he had lived in the cottage for twenty-seven years. Rent had been accepted since the death of his mother. His Honour Judge Hamilton observed that, according to the rent books, the original tenant was the defendant's father, who became a statutory tenant. The defendant's mother was the next statutory tenant, and no further transmission of the statutory tenancy was permissible. The defendant was not protected by the Rent Acts, and an order for possession in three months was made by consent. See *Pain* v. *Cobb* (1931), 47 T.L.R. 596.

### The Remuneration of Shipwrights

In *Thompson* v. *Ward*, at Spilsby County Court, the claim was by a shipwright and carpenter for £140 for materials supplied and work done. The evidence was that the plaintiff had made out his charges on the basis of 300 per cent. on the cost of labour and 100 per cent. on other costs. His Honour Judge Shove queried the reasonableness of such a profit. By consent, judgment was given for the plaintiff for £90 without costs.

### The Remuneration of Doctors

In *Taylor* v. *Morris*, at Bournemouth County Court, the claim was for £12 6s. for medical attendance on the defendant's wife. The plaintiff's case was that the defendant's wife suffered from asthma, and she gave herself injections of adrenalin. On one occasion the needle broke, and an operation was necessary. The plaintiff attended at the operation, and his fee was £7 7s. The case for the defendant was that this was contrary to the agreed scale. On two previous occasions the needle had broken, but this time the ambulance arrived before the defendant knew an operation was necessary. His Honour Judge Armstrong observed that the wife of the defendant must have consented to the operation. The proper fee for attendance was £5 5s. Judgment was given for the plaintiff for £10 11s. 6d. with costs.

### Tenancy of Garage

In *Foster's Executors* v. *Irving & Morris, Ltd.*, at Salisbury County Court, the claim was for possession of a garage, part of the estate of the testator. The premises were let at 20s. a week, and notice to quit had been given. The defendants counter-claimed specific performance of an oral agreement under which they were entitled to a three years' lease from the 1st June, 1946, with an option for renewal for a further four years. Their case was that a Mr. Pike had offered them the premises at 10s. a week. They offered him double that amount if they could have a lease. Relying on his promise to "see about the lease," the defendants went into possession and spent £175 in repairs, and reconnecting electricity and water. It transpired that the premises belonged to Foster and not to Pike. His Honour Judge Armstrong held that it was immaterial to consider any claim the defendants might have against Mr. Pike, e.g., for damages for breach of warranty of authority. An order was made for possession in twenty-eight days, with costs. The counter-claim was dismissed.

# POINTS IN PRACTICE

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**Dispute as between Trustee for Sale who is one Beneficiary and the other Beneficiary as to Sale or Retention**—Position

*Q.* A, by his will, left certain freehold property to B and C in equal shares. B and C, who are also the executors on A's death, assented to the property vesting in themselves as tenants upon trust to sell the same and to hold the net proceeds of sale and rents and profits until sale upon trust for themselves in equal shares as tenants in common. B then dies leaving C surviving him. C wishes to retain the property and to divide the rents between himself and the personal representatives of B. B's personal representatives wish the property sold and the proceeds of sale divided. Can the personal representatives of B compel the sale of the property or can C insist on the exercise of a power of postponement of sale?

*A.* An impasse has been reached which can only be relieved by an application to the court. In effect, therefore, if no application is made C will have his own way. B's personal representatives might consider selling their equitable interest (if possible).

**Bequest of Residuary Estate for the benefit of Sailors' Charities or other Naval or Maritime Organisations for the benefit of Seafaring Men**—Selection at discretion of Trustees—Whether Valid

*Q.* Mrs. B by her will appointed Messrs X, Y and Z to be her executors and trustees and after bequeathing a number of specific and pecuniary legacies gave, devised and bequeathed all her real and personal estate unto her trustees upon trust for sale and conversion in the usual form. Mrs. B directed her trustees to stand possessed of the residue of her estate after paying legacies, etc., and the investments for the time being representing the same ("the residuary trust fund") in trust to pay the income thereof to her children in equal one-third shares during their lives. Upon the death of such of her said children testatrix directed her trustees to stand possessed of one third part or share of her residuary trust fund as originally constituted in trust for such sailors' charities or other naval or maritime organisations for the benefit of seafaring men as her trustees should in their absolute and uncontrolled discretion think suitable. Testatrix died leaving three children her surviving, namely "X," a son and one of her trustees, and "P" and "Q," two unmarried daughters. The debts and legacies have been paid and the income of the residuary trust fund is being paid to X, P and Q in accordance with the will. We shall be glad to know whether you consider the bequest of the residuary trust fund to such sailors' charities or other naval or maritime organisations for the benefit of seafaring men as Mrs. B's trustees shall in their absolute and uncontrolled discretion think suitable to be a valid bequest.

*A.* We think it very doubtful indeed whether the gift is valid. The testatrix seems to differentiate between "sailors' charities," which are undoubtedly "charitable" and "other naval or maritime organisations for the benefit of seafaring men," which might not necessarily be "charitable" (*Midland Bank Executor and Trustee Co.* v. *Archbishop of Wales* [1930] 2 Ch. 389). We think the trustees would be well advised to obtain the opinion of the court on an originating summons.

**Estate Duty**—Reverter to Disponer—Finance Act, 1896, s. 15

*Q.* By a settlement made in 1927, A conveyed certain stocks to trustees upon trust to pay the income thereof to his wife during her life so long as she should not in any way pledge the credit of the said A for her separate use without power of anticipation. If the wife should pledge the credit of the said A, then, until the amount by which the wife should have pledged the credit of the said A had been repaid, the trustees should pay the income to said A. After the death of the wife, income to A during his life. After the death of survivor of A and his wife in trust for such one or more of the children of the marriage as A should by deed or will appoint and in default of appointment, in trust for all the children who attain twenty-one or, being female, marry, if more than one in equal shares. If no children lived to attain a vested interest, then the trust fund reverts to A absolutely. We see that one of the conditions of exemption contained in s. 15 of the Finance Act, 1896, is that the only benefit which the disponer retains in the property is subject to such life or determinable interest, and another condition is that no other interest is created by the disposition. The wife has recently died, being

survived by A and by two daughters of her marriage with A, both of whom have attained twenty-one. We are not clear whether the exemption operates in view of the fact that A would have taken the income if the wife had pledged his credit, and in view of the fact that other persons, namely the two daughters, take an interest under the disposition, although this interest is subsequent to A's life interest.

*A*. We do not think the exemption applies.

(1) " Other interests " were created by the disposition. The section does not confine " other interests " to those taking effect *before* the reversionary interests of A.

(2) Owing to the provision to take effect if the wife pledged the credit of A (although that never happened) it cannot be said that the wife entered into possession of her interest to the entire exclusion of A or of any benefit to him by contract or otherwise.

**Rateability of Church Hall**

*Q*. If a church hall is used for concerts for which there is a charge for admission, the proceeds being for an organisation of the church, will this entitle the local authority to assess the hall for rates ? The church buildings have not previously been rated.

*A*. A church hall is not as such entitled to exemption at all, since under the Poor Rate Exemption Act, 1833, only premises which are exclusively appropriated to public religious worship are exempt. The fact that the proceeds of the concerts are applied to church purposes is immaterial. For a fairly recent case on this exemption see *Cardiff Archdiocese* v. *Pontypridd A.C.* (1930), 12 R. & I. T. 275, in which the King's Bench Division held that part of a Roman Catholic church rateable which was at times screened off and used for purposes other than those of religious worship. A church hall was held not to be exempt from rates in *Barnard Castle, Durham* v. *Durham* (1934), 20 R. & I.T. 247 (at quarter sessions).

# REVIEWS

**Income Tax Case Law.** By A. FARNSWORTH, Ph. D., LL.M. 1947. London : Stevens & Sons, Ltd. 17s. 6d. net.

Viscount Simon has written a foreword to this very interesting discussion of the principles of tax law. The book, though technical, is a pleasure to read and the author has been successful in representing new aspects of some old truths and in explaining in a comprehensive way many recent difficulties. The comparisons made with the income tax law of the United States of America are instructive and the last chapter summarises their treatment of corporate dividends. The other nine chapters of the book describe the principles relating to many subjects, such as : income, accretion of capital, admissible expenses, receipts under insurance policies, offices, mutuality, charitable purposes, fact or law in cases stated, domicil, residence, foreign companies, foreign dividends, legal evasion and capitalised interest. The main field of English tax law has been covered and the latest cases have been fully considered by the author.

**The Law on the Remuneration of Auctioneers and Estate Agents.** By H. N. GRATTAN-DOYLE, M.A., of Gray's Inn and the North-Eastern Circuit, Barrister-at-Law, and DAVID NAPLEY, Solicitor of the Supreme Court (Hons.). 1947. London : The Estates Gazette, Ltd. ; Sweet & Maxwell, Ltd. 23s. net.

Solicitors will welcome this volume as an addition to their everyday library. In the experience of a general conveyancing practice there have been at least six occasions in as many months when access to it would have been invaluable. It does not profess to be exhaustive or very technical, but it is well planned, and succeeds in presenting clearly with well digested examples an up-to-date explanation of the law on the subject as it affects the estate agent.

The authors rightly insist on care in the use of the words " contract " and " employment " as applied to the normal transaction involving an agent. Is it then a mere cavil to suggest that in future editions the headings of certain case notes where they refer to a " contract to employ " or a " contract of employment " might be reconsidered ?

With this and other trifling reservations the book is highly recommended to practitioners whether engaged in conveyancing or litigation. Above all, let those solicitors who are frequently instructed in cases in which a particular agent is involved see that he gets a copy. Prevention of litigation is in every respect better than cure, and by the time the solicitor is instructed the damage has often been done.

**Guide to Income Tax Practice.** By HERBERT EDWARDS, M.A. (Lond.), formerly a Senior Inspector of Taxes, and ALAN M. EDWARDS, B. Com., F.C.A. Sixteenth Edition. 1947. London: Gee & Co. (Publishers), Ltd. 50s. net.

This book is a veritable mine of information in regard to the practice, cases and statutes of the income tax. The scheme of the work is to collect under the very numerous sub-headings all that is relevant to their consideration. They are the labels for situations or facts that are constantly found in practice. The index covers over ninety pages and is exhaustive. Thus, it is easy to discover where the key to the solution of the problem before one lies. The approach is direct and on the facts or similar facts rather than indirect through the propounding and application of principles. Very many decided cases are summarised and this feature is specially useful. The law is covered up to May this year. This is an admirable book of reference for the taxpayer's adviser.

# BOOKS RECEIVED

**A Manual of International Law.** By GEORGE SCHWARZENBERGER, Ph.D., Dr. Jur., Reader in International Law, University of London. 1947. pp. l and (with Index) 428. London : Stevens and Sons, Ltd. 25s. net.

**The Allied Military Government of Germany.** By W. FRIEDMANN, LL.M., Dr. Jur., of the Middle Temple, Barrister-at-Law. 1947. pp. x and (with Index) 362. London : Stevens & Sons, Ltd. 25s. net.

**Burke's Encyclopaedia of War Damage and Compensation.** Supplemental Pt. 29. Edited by H. PARRISH, Barrister-at-Law. London : Hamish Hamilton (Law Books), Ltd.

**Green's Death Duties.** Supplement to the Second Edition. By G. M. GREEN, LL.B. (Lond.). 1947. pp. vii and 36. London : Butterworth & Co. (Publishers), Ltd. 6s. net.

**Rayden on Divorce.** Fourth Edition. Noter-up to Special Supplement. pp. 6. London : Butterworth & Co. (Publishers), Ltd.

**The Trial of German Major War Criminals.** Part 13. 1947. pp. ix and 372. London : H.M. Stationery Office. 6s. 6d. net.

**The Crisis in the Law of Nations.** By H. A. SMITH, D.C.L. (Oxon). 1947. pp. 102. London : Stevens & Sons, Ltd. 7s. 6d. net.

**Oke's Magisterial Formulist.** Thirteenth Edition. By J. P. WILSON, Solicitor. 1947. pp. xxxv, 1094 and (Index) 112. London : Butterworth & Co. (Publishers), Ltd. ; Shaw & Sons, Ltd. 85s. net.

**Jenks' English Civil Law.** Fourth Edition, in two volumes. Editor-in-Chief, P. H. WINFIELD, K.C. 1947. pp. cclxxxiii, 1206 and (Index) 70. London : Butterworth & Co. (Publishers), Ltd. 105s. net per set.

**Frauds and Swindles.** A Cautionary Handbook by MAURICE C. MOORE. Second Edition. 1947. pp. 96. London : Gee & Co. (Publishers), Ltd. 7s. 6d. net.

**Developments in Cost Accounting.** Report of the Cost Accounting Sub-Committee of the Taxation and Financial Relations Committee. 1947. pp. (with Index) 52. London : Gee & Co. (Publishers), Ltd. 8s. 6d. net.

**Directions for Noting** the Amendments made by Acts passed in 1946 to the Revised Statutes to 1920 and the Annual Volumes (Official Edition and Law Reports Edition) since that date. 1947. pp. 110. London : H.M. Stationery Office. 5s. net.

**Burke's Loose-Leaf War Legislation.** Edited by H. PARRISH, Barrister-at-Law. 1946–47 vol., Pts. 17 and 18. London : Hamish Hamilton (Law Books), Ltd.

**A Concise Law Dictionary.** By P. G. OSBORN, LL.B. (Lond.), of Gray's Inn, Barrister-at-Law. Third Edition. 1947. pp. v and 359. London : Sweet & Maxwell, Ltd. 17s. 6d. net.

**Housing Administration.** Butterworth's Sanitary Officers Library, No. 3. By STEWART SWIFT, M.B.E., Chief Sanitary Inspector, City of Oxford. Third Edition. 1947. pp. xxvii, 641 and (Index) 48. London : Butterworth & Co. (Publishers), Ltd. 35s. net.

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The following have been appointed officers of the Honourable Society of Lincoln's Inn for the year beginning 11th January : Treasurer, His Honour Tom Eastham, K.C. ; Master of the Library, Mr. J. H. Stamp ; Dean of the Chapel, Lord Simonds ; Keeper of the Black Book, Mr. Justice Vaisey ; Master of the Walks, Sir Henry Tindal Methold. Mr. H. L. Parker has been elected a Bencher in place of the late Mr. A. L. Ellis.

## CERTIFICATES OF VALUE IN LEASES

SINCE 1st August, 1947, when the new rates of stamp duties took effect, there has been some diversity of practice in the wording of certificates of value under s. 54 (3) (*a*) of the Finance Act, 1947, in its application to leases within the £1,500 limit. The question at issue has been whether to qualify the word "consideration" by the limiting words "other than rent." The time-honoured certificate laid down by s. 15 of the Revenue Act, 1911, in relation to leases within the £500 limit expressly required the inclusion of these qualifying words, and it is indeed only in this one particular that that certificate differs from the form applicable to conveyances on sale by virtue of s. 73 of the Finance (1909–10) Act, 1910.

Unfortunately s. 54 of the Finance Act, 1947, does not deal separately with leases and conveyances on sale. The relevant provisions (subss. (3) and (5)), so far as they are material, run as follows:—

"(3) This Part of this Act, so far as it increases any duty chargeable under or by reference to the heading 'Conveyance or Transfer on Sale' . . . shall not apply . . .

(*a*) in any case where the amount or value of the consideration for the sale does not exceed £1,500 and the instrument contains a statement certifying that the transaction thereby effected does not form part of a larger transaction or of a series of transactions, in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds £1,500 . . .

(5) In the two last foregoing subsections any reference to the amount or value of any consideration shall be construed . . .

(*b*) in relation to duty chargeable by virtue of the said heading 'Lease or Tack,' as a reference to the amount or value of the consideration in money, stock or security, other than rent."

*Prima facie*, therefore, the contents of the certificate, even in leases, are laid down by subs. (3) and do not include the words in question. It is over the effect of subs. (5) that opinions have differed, and the difference has led in a few cases to practical difficulties in getting leases stamped at the £1 per cent. rate. It appears that at certain branch stamp offices it has been the practice to insist on the deletion of the words "other than rent" from the consideration clause before acceptance for stamping at the concession rate, with the consequent requirement that the alteration be initialled by both parties. As one correspondent has pointed out, "where two firms are concerned it would mean the purchaser has to part with the deed upon which he has already paid the purchase price." Apart altogether from the inconvenience thus caused to the parties, the deletion might cause serious embarrassment in borderline cases, as, for instance, where a lease is granted for a consideration of £1,490 and a rent of £15. In such circumstances can a certificate of value under s. 54 (3) (*a*) properly be given without the words "other than rent"?

It is gratifying, therefore, to learn, following representations made by this journal to the Inland Revenue authorities, that in future all stamp offices will accept leases containing the vital qualifying words. It is not clear whether the alternative form will continue to be acceptable, but there can be no doubt that even if it is, its use is undesirable. Apart from the advantage of standardising the form of the certificate to accord with the traditional wording in the "under £500" certificate, one may well conclude after studying s. 54 (5) that a certificate which omits the three limiting words "other than rent" in fact fails to satisfy the plain requirements of the section. For that subsection provides in effect that in relation to leases the word "consideration" in s. 54 (3) (*a*) shall be read as "consideration other than rent," and when this substitution is made it becomes clear that in a lease the certificate is *required* to deal, not with the whole consideration, but only with such part thereof as does not consist of rent.

It is to be observed that there is nothing in subs. (5) to give a special narrow meaning to the word "consideration" when used elsewhere than in the section itself. It has no effect in construing the actual certificate embodied in the lease, where the word "consideration" must—in the absence of the qualifying phrase "other than rent"—be construed in its ordinary and unrestricted natural meaning. The familiar wording in the "under £500" certificate, therefore, suitably adapted in regard to the amount, appears to be the only form of words which not only satisfies the section and enables the certificate to be given with a clear conscience in borderline cases of the kind mentioned above, but also avoids the anomaly of a varying formula according as the consideration is less or more than £500.

These remarks do not, of course, apply to assignments of leases, which are treated as conveyances on sale.

## NOTES OF CASES

### CHANCERY DIVISION

*Re* **Avard; Hook *v.* Parker**

Roxburgh, J. 15th October, 1947

*Will—Grant of conditional option to purchase devised property—Option exercised out of time—Time of the essence.*

Adjourned summons.

A testatrix provided in her will as follows: ". . . at the expiration of one month's previous notice in writing from the said F C to be given by him . . . within three calendar months after the death of my sister the said S A . . . forthwith to convey to . . . F C . . . (certain properties)." F C died in 1935; S A died on 1st January, 1946. The personal representative of F C did not hear of her death until 9th April, 1946, whereupon he purported to exercise the option on 10th April. A residuary legatee disputed the validity of his action.

ROXBURGH, J., said that after the death of F C the right of exercising the option devolved on his personal representative, but the exercise had been out of time. The delay had caused no detriment to anyone, and there were arguments in favour of F C's estate to be derived from a line of authorities, beginning with *Taylor* v. *Popham* (1782), 1 Bro. C.C. 168, and concluding with *Re Goldsmith's Will Trusts* [1947] 1 Ch. 339. However, the decision in *Brooke* v. *Garrod* (1857), 2 De G. & J. 62, given by a Lord Chancellor sitting on appeal, was exactly in point and should be followed. *Powell* v. *Rawle* (1874), L.R. 18 Eq. 243, was also in point. He would not attempt to reconcile the two lines of cases, but must hold that the option was not well exercised.

COUNSEL: *W. F. Waite; M. Berkeley; V. M. Pennington.*

SOLICITORS: *Kenneth Brown, Baker, Baker*, for *Andrews and Bennett*, Burwash; *Shelton, Cobb & Co.*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

**Hutton *v.* Watling**

Jenkins, J. 3rd November, 1947

*Contract—Option to acquire premises at an unspecified future date—Evidence to contradict terms of written document—Consideration—Perpetuity—Specific performance.*

Action.

The plaintiff, who had purchased the goodwill of the defendants' business in 1937, claimed specific performance of an agreement for the sale by the defendants to the plaintiff of the premises in which the business was carried on, relying on a document in writing dated 6th September, 1937, which was signed by the defendants. By this document, the defendants (*inter alia*) acknowledged receipt of the purchase price of the goodwill, agreed not to open or acquire a competing business, granted the plaintiff a weekly tenancy of the premises, and agreed that "in the event of purchaser wishing at any future date to purchase property in which the business is situated, she has the option of purchase at a price not exceeding £450." The document also contained provisions which would apply if the premises were sold to a third party, or if the plaintiff were to sell the business. The plaintiff exercised her option to purchase by letter in December, 1944. The defendants contended (1) that the sale of the business had been effected by oral agreement, and that this agreement had been completed by transfer and delivery and payment of the purchase price before the execution of the document referred to; that the document was a mere recital of an executed contract together with a recital of a number of additional promises made without consideration and, therefore, unenforceable; alternatively (2) that as a matter of construction the provision conferring the option was an independent stipulation for which there was no consideration; and (3) that the option provision was void as infringing the rule against perpetuities. The defendants sought to adduce oral evidence in support of the first proposition.

JENKINS, J., said that he could not admit oral evidence for the purpose of contradicting a document which the defendants had signed as containing the terms of their agreement with the plaintiff. The defendants' second contention was also untenable, as the option provision was clearly part of the terms of sale and was not without consideration. Regarding the defendants' third point, the authorities presented some difficulty; in *London and South-Western Railway Co.* v. *Gomm* ((1881), 20 Ch. D. 562), the plaintiffs had sold land taking an option to re-purchase unlimited in time, and sought to obtain specific performance against a successor in title of the original purchaser; the Court of Appeal held that the covenant created an interest in land and was void as a perpetuity, and that if it had not run with the land, it would have been unenforceable against an assignee. That case was

followed in *Woodall* v. *Clifton* [1905] 2 Ch. 257 and *Worthing Corporation* v. *Heather* [1906] 2 Ch. 532. In *South-Eastern Railway Co.* v. *Associated Portland Cement Manufacturers, Ltd.* [1910] 1 Ch. 12, the Court of Appeal decided that an option to purchase land without limit of time was specifically enforceable as a matter of personal contract against the original grantor, and that the rule against perpetuities had no relevance, as distinct from a case in which an option was sought to be enforced against a successor of the grantor by virtue of an equitable interest in the land conferred on the grantee by the option agreement. The doubts expressed on this case in Williams on Vendor and Purchaser, 4th ed., vol. I, p. 424, note (1), and Gray on Perpetuities, 4th ed., pp. 366 and 367, appeared to be ill founded, as the jurisdiction to grant specific performance was founded not upon an equitable interest in the land but on the ground that damages were not an adequate remedy. A similar agreement had been held unenforceable in *Rider* v. *Ford* [1923] 1 Ch. 541, but the *Associated Portland Cement* case had not been cited, and judgment had followed an admission by counsel that the perpetuity rule had been infringed; that case could not be regarded as an authority for the defendants' contention. It followed that the plaintiff was entitled to an order for specific performance.

COUNSEL: *L. M. Jopling; J. F. Bowyer.*

SOLICITORS: *Metcalfe, Copeman & Pettefar; Pritchard, Sons, Partington & Holland*, for *Alan G. Hawkins & Co.*, King's Lynn.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

## KING'S BENCH DIVISION

### R. *v.* Commissioner of Police for the Metropolis and Another, *ex parte* Nalder

Lord Goddard, C.J., Humphreys and Croom-Johnson, JJ.
28th October, 1947

*Criminal law—Indictable offence by British subject in Eire—Warrant for arrest issued in Eire—Execution in England—Petty Sessions (Ireland) Act*, 1851 (14 & 15 *Vict. c.* 93).

Application for a writ of *habeas corpus*.

On the 27th August, 1947, a warrant was issued by a Justice of a District Court in Eire for the arrest of the applicant for an indictable misdemeanour. The warrant, which was issued as provided by the Petty Sessions (Ireland) Act, 1851, which applied to Ireland when Ireland was part of the United Kingdom and has never been repealed, was on 5th September brought before a metropolitan magistrate sitting at Bow Street, who endorsed it for execution in this country. The applicant having been arrested, permission was obtained on his behalf to move for a writ of *habeas corpus* on the ground that being held in custody for the purpose of being brought before justices in Ireland was illegal, and that the proceedings, if any, should have been taken under the Fugitive Offenders Act, 1881.

LORD GODDARD, C.J., said that it was beyond question that the applicant was in lawful custody. The Petty Sessions (Ireland) Act, 1851, was an entirely Irish statute, except that the provisions in it with regard to the backing of warrants were effective in England, just as s. 12 of the Indictable Offences Act, 1848, an English Act, was effective in Ireland. Under the Act of 1851 a warrant issued in Ireland could, on the appropriate steps being taken and the endorsement of a justice in England being obtained, be executed, among other places, in England or in any part of what was formerly the United Kingdom. In the same way, under the Act of 1848 a warrant issued in England could be executed in Ireland; and the Act of 1851, except as to machinery provisions, did not whittle that down. No doubt, the practice had been to proceed under the Act of 1851 rather than that of 1848. That, however, was immaterial, for both Acts were in force under the Irish Free State Constitution Act, 1922. By art. 8 of the Irish Free State (Consequential Adaptation of Enactments) Order, 1923, made under s. 6 of the Irish Free State (Consequential Provisions) Act, 1922, "The provisions of any enactments which are applicable to (*a*) the endorsement and execution in England . . . of warrants issued by justices, courts or judges of courts in Ireland; shall apply respectively to . . . (1) warrants issued by justices, courts or judges of courts in the Irish Free State." Thus, it was provided that the existing enactments in question should apply to warrants issued by justices, courts or judges of courts in the Irish Free State. Article 8 of the Order of 1923 clearly contemplated that a warrant issued in Ireland could be executed in England if the enactments relating to the backing and executing of warrants were valid. The applicant had been arrested under a warrant issued by a justice in Ireland. The Petty Sessions (Ireland) Act, 1851, which was still in force in Ireland, had been complied with. Therefore there was no ground for saying that the applicant was not at present in lawful custody. The main argument for him was that the proceedings should have been taken under the Fugitive Offenders Act, 1881. It was not necessary to express any opinion whether that Act could apply at all between England and Eire, though he (his lordship) was strongly inclined to the opinion that it could not. Whether it did or not, it was clear that the Acts of 1851 and 1848 applied, and that what had been done here had been done regularly and in accordance with them. The system of backing warrants for execution in England, provided that the warrant had been granted by a properly constituted judicial officer in Ireland, was still in force. The application must be refused.

HUMPHREYS and CROOM-JOHNSON, JJ., agreed.

COUNSEL: *Richard O'Sullivan*, K.C., *John Maude*, K.C., and *R. E. Seaton; Sir Valentine Holmes*, K.C., and *Geoffrey Howard.*

SOLICITORS: *C. Grobel, Son & Co.; The Solicitor for Metropolitan Police.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### House Property & Investment Co., Ltd. *v.* James Walker (Goldsmith & Silversmith), Ltd.

Lord Goddard, C.J. 6th November, 1947

*Landlord and tenant—Breach of covenant against sub-letting without consent—Notice to remedy breach not complied with—Sub-letting to Government Department under threat of requisition—Power of court to grant relief from forfeiture—Law of Property Act*, 1925 (15 & 16 *Geo.* 5, *c.* 20), *s.* 146.

Action tried by Lord Goddard, C.J.

The plaintiff company, as landlords, claimed from the defendant company, their tenants, possession of shop premises at Hounslow, on the ground of breaches of covenants in the lease. The lease by which the tenants held the premises contained covenants by the tenant not to assign or sub-let the premises without the landlords' consent, and not to make structural alterations to them, and also a proviso for forfeiture in the event of breach by the tenants of any of the covenants. The tenants carried out certain structural alterations to the premises, and sub-let them without the landlords' consent. That sub-letting took place because, in April, 1945, H.M. Commissioners of Works went into occupation of the premises for the purpose of their use as a resettlement advice bureau. The Commissioners occupied the premises under an agreement for a tenancy for two years granted them by the tenants after the latter had received oral warning that if they did not grant the lease the premises would probably be requisitioned. On 28th August, 1946, the landlords gave the tenants notice as prescribed by s. 146 (1) of the Law of Property Act, 1925, requiring them to remedy the breaches and pay compensation. The tenants having failed to comply with the notice, the landlords brought this action, in which the tenants claimed relief from forfeiture under s. 146 (2). By s. 146 (2) of the Act of 1925, "where a lessor is proceeding . . . to enforce . . . a right of re-entry or forfeiture, the lessee may . . . apply to the court for relief; and the court may grant or refuse relief, as the court, having regard . . . to all the . . . circumstances, thinks fit . . ."

LORD GODDARD, C.J., said that, *prima facie*, breaches of covenant had been committed by the tenants and forfeiture of the lease incurred. It was submitted for the landlords that the court had no power to grant relief where the breach of covenant consisted of sub-letting the premises without consent. His lordship referred to *Barrow* v. *Isaacs & Son* [1891] 1 Q.B. 417 and *Eastern Telegraph Co., Ltd.* v. *Dent* [1899] 1 Q.B. 835, and said that before the Law of Property Act, 1925, had been passed, the obligation on the landlord under the Conveyancing Act, 1881, to serve notice on the tenant requiring him to remedy the breach did not apply where the covenant broken was the covenant not to sub-let without consent, the discretion of the court to grant relief in that case being exercisable according to the ordinary law and practice of the courts of equity. In his (his lordship's) opinion, the law had been altered by s. 146 of the Act of 1925, and that section applied to any breach of covenant. The matter was, he thought, placed beyond doubt by s. 146 (8). There was no doubt that the court had power to grant relief here. It had been one of the objects of the Act of 1925 to extend the power of the court to grant relief given by the Act of 1881. While, therefore, the landlords had made out their allegations of breach of covenant, he (his lordship) would grant the tenants relief from forfeiture, and there would be judgment accordingly.

COUNSEL: *Beresford*, K.C., and *John Russell; Levy*, K.C., and *H. V. Lloyd-Jones.*

SOLICITORS: *Henry Gover & Son; Bulcraig & Davis.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## COURT OF CRIMINAL APPEAL

**R. *v.* Higgins**

Lord Goddard, C.J., Humphreys and Singleton, JJ.

3rd November, 1947

*Criminal law—Inn—Traveller's request for food—Extent of innkeeper's common-law obligation.*

Appeal from conviction.

The appellant was the keeper of an inn at Epping. On Sunday, 27th April, 1947, the prosecutor and his wife, who were admittedly travellers, went to the inn and asked for lunch, which was then being served. The dining room was not full. The manageress refused to supply the prosecutor with luncheon as he had not booked a table. The prosecutor alleged that he asked for sandwiches and that the manageress refused them. There was more than enough food for luncheon in the inn at the time, some food being reserved for the evening meal and for the next morning's breakfast. The appellant having been found guilty at Essex Quarter Sessions on a charge of refusing, without lawful excuse, as the keeper of the inn, to supply a traveller with refreshment for which he was willing to pay, was convicted and fined twenty shillings. He now appealed. (*Cur. adv. vult.*)

LORD GODDARD, C.J., reading the judgment of the court, said that there was no doubt about an innkeeper's obligations; he was bound to supply a traveller with food and lodging which he could not refuse without reasonable excuse. A reasonable excuse was a lawful excuse. During the opening speech at the trial the chairman of quarter sessions had said that, given that the man was a traveller and that the innkeeper had not an absolutely full house and had, or could procure, food, his obligation to provide food was absolute. That was not an accurate statement of the law. An innkeeper was not bound in law, if he had no food in the house, to send out to procure it. If a jury thought that an innkeeper was not making provision for such guests as he might reasonably expect they might say that he had acted unreasonably; but it was far too wide a statement to say that he was bound to supply food if he could procure it. The court could also not agree that the obligation of the innkeeper was absolute if he had food in the house: it might well be reasonable for an innkeeper to refuse food at a given time because he had to consider travellers who might come later in the day, those staying in the inn, and the requirements of his own family and staff. Persons living in the immediate neighbourhood of an inn would, of course, not be travellers, and it might well be that an innkeeper was not entitled so to arrange his affairs that he could supply residents in his town with the result that he could not supply legitimate travellers requiring refreshment on their journey. While an innkeeper was not allowed to "pick and choose his guests," that expression did not apply where a number of travellers had given notice to an innkeeper by telephone or letter that they would be calling at his inn, and he had provided for them. The court could not agree with the view that there was something improper or illegal in an innkeeper's booking tables. He was not bound to supply any particular sort of meal in any particular room. The whole question was whether or not a refusal was in all the circumstances reasonable. When the chairman, in summing up, said that, if sandwiches were offered and refused, that was an end of the case, he was actually putting the matter too favourably to the innkeeper, for it would be for the jury to say whether the offer of sandwiches amounted to an offer of reasonable refreshment in the circumstances. The chairman had been wrong in directing the jury that an innkeeper was not entitled, having booked all his tables, and having food in the house, to refuse to serve a traveller because that meant "picking and choosing." That, again, was to state the matter far too broadly. There could not, as a matter of law, be anything wrong in an innkeeper's refusing to serve anyone who had not booked a table even if he had food in the house unless, on a full consideration of all the facts, the jury thought such a refusal unreasonable. He was not obliged to serve the last crumb in the house to any traveller who might arrive at any moment. If he knew, or reasonably expected, that other travellers would arrive in the evening, he was surely entitled to keep food for an evening meal. So many extraneous circumstances had been imported into the case that the only safe course was to quash the conviction. The appeal would be allowed.

COUNSEL: *Slade*, K.C., and *C. E. Rochford*; *Buckee*.

SOLICITORS: *J. E. Lickfold & Sons*; *Director of Public Prosecutions*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

# PARLIAMENTARY NEWS

## HOUSE OF LORDS

Read First Time:—

EDUCATION (SCOTLAND) BILL [H.L.] [4th November.
To amend the law relating to education in Scotland.

EXPIRING LAWS CONTINUANCE BILL [H.C.] [4th November.

RIVER BOARDS BILL [H.L.] [4th November.
To provide for establishing river boards and for conferring on or transferring to such boards functions relating to land drainage, fisheries and river pollution, and certain other functions, and for purposes connected with the matters aforesaid.

## HOUSE OF COMMONS

Read First Time:—

HOUSING (TEMPORARY ACCOMMODATION) BILL [H.C.] [6th November.
To increase the sums available for defraying expenses incurred by the Minister of Works under section one of the Housing (Temporary Accommodation) Act, 1944.

PENSIONS (GOVERNORS OF DOMINIONS, ETC.) BILL [H.C.] [7th November.
To amend the Pensions (Governors of Dominions, etc.) Acts, 1911 to 1936.

Read Second Time:—

BURMA INDEPENDENCE BILL [H.C.] [5th November.

EMERGENCY LAWS (TRANSITIONAL PROVISIONS) BILL [H.C.] [7th November.

OVERSEAS RESOURCES DEVELOPMENT BILL [H.C.] [6th November.

## QUESTIONS TO MINISTERS

### ADVOCATES FOR THE POLICE

Sir R. GLYN asked the Secretary of State for the Home Department whether in view of the great increase of the work being dealt with by magistrates in all parts of the country, he will consider what steps can be taken to enable solicitors to be engaged in presenting cases on behalf of the police.

Mr. EDE: I recognise that in the great volume of cases coming before magistrates' courts there is a considerable number in which it is desirable that the police should be legally represented, and particulars of police prosecutions received from all police forces in England and Wales show that over the last few years there has in fact been a general increase in the percentage of cases where legal representation is employed. The question whether any further steps can be taken to secure that the police are legally represented in appropriate cases is receiving consideration. [6th November.

### REQUISITIONED PROPERTY (COMPENSATION)

Mr. GAMMANS asked the Chancellor of the Exchequer if he is aware of the unfair treatment accorded to owners of property requisitioned during the war period by reason of the fact that the compensation payable under s. 2 (1) (*a*) of the Compensation (Defence) Act, 1939, is limited under s. 45 of the Requisitioned Land and War Works Act, 1945, to an amount not exceeding the level of rental value obtaining in respect of comparable land on 31st March, 1939, or on 24th February, 1946, whichever is the lower; and what steps are being taken to increase this compensation to the level of current market values in view of the fact that the compensation payable on the compulsory acquisition of land is now based on those values under the Town and Country Planning Act, 1947.

Mr. GLENVIL HALL: This matter is under consideration. [6th November.

### COMPENSATION RENTALS (DISPOSSESSED FARMERS)

Sir E. GRAHAM-LITTLE asked the Minister of Agriculture what relation compensation rentals paid to dispossessed farmers bear to the rents received by the agricultural executive committees from the tenants they instal in dispossessed premises.

Mr. T. WILLIAMS: The basis of compensation rental as laid down in s. 2 (1) (*a*) of the Compensation (Defence) Act, 1939, is the equivalent of the rent which a tenant entering immediately before requisition would be willing to pay for the land in its condition at that time, no account being taken of appreciation of values due to the emergency. The rent obtained by the committee depends upon the value of the property in its condition at the time of letting, account being taken of improvements carried out by the committee. [7th November.

PROPERTY VALUES (CONTROL)

Mr. WILKES asked the Minister of Health whether he will consider controlling inflated property values by pegging them; whether he is aware that the unchecked rise in property values on successive sales of houses increases rents and the cost of living generally; and what action is contemplated by the Government to check this growing menace.

Mr. BEVAN: The Government have fully considered this question, particularly in the light of the Report of the Inter-Departmental Committee on the Selling Price of Houses, presented in August, 1945 (Cmd. 6670), and have concluded that the practical difficulties are such as to preclude effective legislative measures. [7th November.

SCOTTISH LEGAL AID

'In a written answer to Mr. WILLIS, the SECRETARY OF STATE FOR SCOTLAND stated that the preparation of a legal aid and advice scheme was in hand, but he could not say whether it would be possible to introduce legislation on the subject in this session. [4th November.

MAGISTRATES' COURTS (STATISTICS)

In a written answer to Sir R. GLYN, the HOME SECRETARY stated that the number of offences dealt with by magistrates' courts in 1939 was 745,148, and in 1946, 587,512. For the first six months of 1947 the figure was 308,326. [6th November.

# NOTES AND NEWS

### Honours and Appointments

Master Sir PERCY SIMNER has succeeded Sir William Valentine Ball, who has retired, in the office of the Senior Master in the King's Bench Division of the Supreme Court.

The Master of the Rolls has appointed Mr. CLAUDE HERBERT GRUNDY to be a Master in the King's Bench Division of the Supreme Court.

The Lord Chancellor has appointed Mr. STUART HAYNE GRANVILLE-SMITH, of 5, Paper Buildings, Temple, E.C.4, to be a Judge of County Courts (on release from service with the Control Commission for Germany), the appointment to have effect on the 17th November, 1947. Mr. Granville-Smith will be one of the judges for Circuit No. 38 (Edmonton, etc.).

The Lord Chancellor has appointed Mr. JAMES GRAEME BRYSON to be Joint Registrar of the Liverpool County Court and Joint District Registrar in the District Registry of the High Court of Justice in Liverpool as from the 10th November, 1947.

The Lord Chancellor has appointed Mr. WERNER RALPH DAVIES, Registrar of the Salford and Oldham County Courts, to be in addition the Registrar of the Altrincham County Court as from the 10th November, 1947.

The Lord Advocate, Mr. John Wheatley, K.C., has made the following appointments: Advocates-Depute—Mr. H. W. GUTHRIE, K.C., Mr. SINCLAIR SHAW, Mr. GORDON STOTT, and Mr. H. R. LESLIE; Extra-Advocate-Depute—Mr. J. G. LEECHMAN; Sheriff Court Advocate-Depute—Mr. I. M. ROBERTSON.

Mr. GEORGE CUTHBERT WILLIAM BARKER has been appointed Borough Coroner of Newcastle-under-Lyme, in succession to Mr. T. E. Sproston, who has resigned on grounds of ill-health. Mr. Barker was admitted in 1936.

Mr. R. L. C. WOOD has been appointed Assistant Solicitor to Barking Borough Council.

Mr. LESLIE O. WILLIAMS, Assistant Solicitor to Chatham Corporation, has been appointed Deputy Town Clerk of Halesowen, Worcestershire.

Mr. W. A. J. CLARK, Assistant Solicitor (General), London Passenger Transport Board, has been appointed Parliamentary Assistant Solicitor to the British Transport Commission. He was admitted in 1940.

Mr. STEPHEN G. JONES, chief assistant to the Assistant Solicitor (General), London Passenger Transport Board, has been appointed Acting Assistant Solicitor (General). He was admitted in 1938.

At the annual general meeting of the Dublin Solicitors' Bar Association, Mr. LEO J. JAMESON was elected President, and Mr. BRENDAN T. WALSH Vice-President.

Mr. T. B. WHYTE has resigned his appointment as Assistant Solicitor to Woolwich Council.

### Notes

The Council of The Law Society announce that forty-three of the eighty-three candidates who sat passed the Preliminary Examination held on 15th and 16th October, 1947.

At a meeting of the directors of the Solicitors' Benevolent Association, held on the 5th November, 1947, Mr. G. E. Longrigg, T.D., M.A. (Bath), was elected chairman for the ensuing year, and Mr. A. North Hickley (London), vice-chairman. Grants amounting to £4,390 0s. 6d. were made to forty-five beneficiaries. Thirty-two new members were admitted. Solicitors who are not yet members are asked to write to the Secretary, at 12 Clifford's Inn, E.C.4, for information about the Association's work.

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THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.

Shareholders in The Solicitors' Law Stationery Society, Ltd., are being invited to apply for 16,098 £1 shares, the balance unissued of 150,000 £1 shares, in the proportion of one share for every ten shares held, at the price of 40s. per share.

Applications must reach the National Provincial Bank, Ltd., Lincoln's Inn Branch, Carey Street, London, W.C.2, by first post on Tuesday, 2nd December, 1947.

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### Wills and Bequests

Mr. W. Bagshaw, solicitor, of Doncaster, left £26,471, with net personalty £24,914.

Mr. E. E. Ruston, solicitor, of Chatteris, Cambridgeshire, left £27,686.

# OBITUARY

Mr. J. E. T. DUCKER

Mr. James Ernest Townshend Ducker, solicitor, senior partner of Messrs. Moody & Woolley, of Derby, died on 27th October, aged seventy-eight. He was admitted in 1900, was Clerk to the Derby County Magistrates for twenty-five years, and four times filled the office of Under-sheriff to the Sheriff of Derbyshire. He was legal secretary to the Bishop of Derby, and Registrar of the Diocese of Derby and of the Archdeaconries of Derby and Chesterfield. He was a past-president of the Derby Law Society and of the Derby and Derbyshire Chamber of Commerce.

Mr. G. E. SMITH

Mr. George Edward Smith, solicitor, of Messrs. Howe & Co., of Sheffield, was killed in the train crash near Berwick-on-Tweed, on 26th October. He was admitted in 1905, and was Clerk of the Peace for Sheffield for twenty-nine years.

# RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 2341. **Factories** (Hours of Employment in Factories using Electricity) (Amendment) Order. November 3.

No. 2347. **Provisional Order, Scotland.** Amending General Order, October 31, for the Regulation of Proceedings under and in pursuance of the Private Legislation Procedure (Scotland) Act, 1936. Published November 6.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

# COURT PAPERS

## SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1947

COURT OF APPEAL AND HIGH COURT OF JUSTICE
CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

| Date | Emergency Rota | Appeal Court I | Mr. Justice Vaisey |
|---|---|---|---|
| Mon., Nov. 17 | Mr. Farr | Mr. Reader | Mr. Hay |
| Tues., ,, 18 | Blaker | Hay | Farr |
| Wed., ,, 19 | Andrews | Farr | Blaker |
| Thurs., ,, 20 | Jones | Blaker | Andrews |
| Fri., ,, 21 | Reader | Andrews | Jones |
| Sat., ,, 22 | Hay | Jones | Reader |

| Date | Group A | | Group B | |
|---|---|---|---|---|
| | Mr. Justice Roxburgh *Non-Witness* | Mr. Justice Wynn Parry *Witness* | Mr. Justice Romer *Non-Witness* | Mr. Justice Jenkins *Witness* |
| Mon., Nov. 17 | Mr. Jones | Mr. Andrews | Mr. Blaker | Mr. Farr |
| Tues., ,, 18 | Reader | Jones | Andrews | Blaker |
| Wed., ,, 19 | Hay | Reader | Jones | Andrews |
| Thurs., ,, 20 | Farr | Hay | Reader | Jones |
| Fri., ,, 21 | Blaker | Farr | Hay | Reader |
| Sat., ,, 22 | Andrews | Blaker | Farr | Hay |